



Billing Code 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

RIN 0648-XF789

Plan for Periodic Review of Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notification of plan for periodic review of regulations; request for comments.

SUMMARY: Regulatory Flexibility Act (RFA) section 610 requires that NOAA Office of National Marine Sanctuaries (ONMS) periodically review existing regulations that have a significant economic impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. This plan describes how ONMS will perform this review and describes the regulations proposed for review in 2018.

DATES: Comments must be received on or before [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by:

- Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2017-0133>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personally identifiable information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily submitted by the commenter will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Meredith Walz, NOAA Office of National Marine Sanctuaries, 1305 East West Highway, Silver Spring MD 20910, Meredith.Walz@noaa.gov, or 240-355-0686.

SUPPLEMENTARY INFORMATION:

Background

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires that federal agencies take into account how their regulations affect “small entities,” including small businesses, small governmental jurisdictions and small organizations. For regulations proposed after January 1, 1981, the agency must either prepare a Regulatory Flexibility Analysis or certify the regulation,

if promulgated, will not have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA, 5 U.S.C. 610, requires federal agencies to review existing regulations. It requires that ONMS publish a plan in the *Federal Register* explaining how it will review existing regulations that may have a significant economic impact on a substantial number of small entities. Regulations that become effective after January 1, 1981 must be reviewed within 10 years of the publication date of the final rule. Section 610(c) requires that ONMS publish in the Federal Register a list of rules it will review during the succeeding 12 months. The list must describe, explain the need for, and provide the legal basis for the rules, as well as invite public comment on the rules.

In addition, section 605 of the RFA provides that, when a rule is promulgated, the head of an agency may certify to the Small Business Administration's Chief Counsel for Advocacy that a rule would not have a significant economic impact on a substantial number of small entities. Guidance on implementing the requirements of RFA section 610 indicates that agencies should also determine if previously changed conditions may mean that a certified rule now does have a significant economic impact on a substantial number of small entities.

Criteria for Review of Existing Regulations

The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities, consistent with the objectives of other applicable statutes. In deciding whether change is necessary, RFA section 610(b) establishes five factors that agencies will consider in reviewing existing regulations:

- (1) Whether the rule is still needed;

- (2) What type of public complaints or comments were received concerning the rule;
- (3) How complex is the rule;
- (4) How much the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- (5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

Plan for Periodic Review of Rules

ONMS will conduct reviews in such a way as to ensure that all rules for which a Final Regulatory Flexibility Analysis was prepared are reviewed within 10 years of the year in which they were originally issued. During this same period, ONMS will also review other rules certified under RFA section 605 as not having significant impacts. ONMS will evaluate whether those rules now have a significant impact and therefore should be reviewed under RFA section 610. ONMS intends that it will conduct section 610 reviews on applicable regulations on an annual basis. ONMS will make RFA Section 610 review reports available at the following website: <http://sanctuaries.noaa.gov/library/alldocs.html>.

ONMS Regulation Requiring Review for 2018

One rulemaking finalized in 2008, and one rulemaking finalized in January 2009, are being reviewed under RFA section 610. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that these rules would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not required, and none were prepared for the following actions:

1. “Gulf of the Farallones National Marine Sanctuary Regulations; Monterey Bay National Marine Sanctuary Regulations; and Cordell Bank National Marine Sanctuary Regulations”. RINs 0648-AT14, 0648-AT15, 0648-AT16 (73 FR 70488; November 20, 2008). ONMS issued this rule, along with final revised management plans, for the Gulf of the Farallones (now renamed Greater Farallones), Cordell Bank, and Monterey Bay national marine sanctuaries (GFNMS, CBNMS, and MBNMS respectively). This final rule updated the regulations for the three sanctuaries, and established new regulatory prohibitions for them. New prohibitions contained in the regulations included restrictions on: the introduction of introduced species; discharges from cruise ships and other vessels; attracting or approaching white sharks in GFNMS; anchoring vessels in seagrass in Tomales Bay; deserting vessels; motorized personal watercraft use in the MBNMS (definition revision); and, possessing, moving, or injuring historic resources. This final rule also codified three dredge disposal sites in the MBNMS that existed prior to the MBNMS designation in 1992, and expanded the boundaries of the MBNMS to include the Davidson Seamount and surrounding area.

2. “Channel Islands National Marine Sanctuary Regulations”. RIN 0648-AT17 (74 FR 3216; January 16, 2009). ONMS published this rule, along with final revised management plans, to finalize the regulations for the Channel Islands National Marine Sanctuary (CINMS or Sanctuary). The rule revised the regulations to implement prohibitions on: exploring for, developing, or producing minerals within the sanctuary; abandoning matter on or in sanctuary submerged lands; taking marine mammals, sea turtles, or seabirds within or above the sanctuary; possessing within the sanctuary any marine mammal, sea turtle, or seabird; marking, defacing, damaging, moving, removing, or tampering with sanctuary signs, monuments, boundary markers, or similar items; introducing or otherwise releasing from within or into the sanctuary an

introduced species; and operating motorized personal watercraft within waters of the sanctuary that are coextensive with the Channel Islands National Park. NOAA also made additional changes to the grammar and wording of several sections of the regulations to ensure clarity.

ONMS invites comments on these rules. ONMS plans to complete the RFA section 610 review of the regulations by November 1, 2018. Unless we publish a notification stating otherwise, ONMS will make the final report available at <http://sanctuaries.noaa.gov/library/alldocs.html>.

Dated: December 27, 2017.

John Armor,

Director,

Office of National Marine Sanctuaries.

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